



Advanced Juvenile Adjudication Issues

2018 Executive Office for Immigration Review
Legal Training Program



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Panelists:

- Amy Hoogasian, Assistant Chief Immigration Judge
- Randa Zagzoug, Immigration Judge
- Daniel Cicchini, Associate General Counsel, Office of General Counsel
- Caitlin Brazill, Assistant Program Director, Office of Legal Access Programs

Juvenile Adjudications Panel



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Learning Objectives

- **Federal Litigation Update**
- **Understand** *Guidelines for Immigration Court Cases Involving Juveniles- OPPM 17-03*
- **Understand the distinctions among terms** “child,” “juvenile,” “minor” and “unaccompanied alien child;”
- **Enhance** management and conduct of hearings involving juveniles
- **Explore** Tools, Techniques and Juvenile Best Practices

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Terminology

- **Child**: an unmarried individual under the age of 21. INA §§ 101(b)(1), (c)(1). Most relevant to visa petitions, adjustment of status, and cancellation of removal for non-permanent residents.
- **Juvenile**: an individual less than 18 years of age. 8 C.F.R. § 1236.3(a).

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Terminology

- **Unaccompanied Alien Child (UAC):** has a special meaning under the TVPRA and Homeland Security Act of 2002. 6 U.S.C. § 279(g)(2); 8 U.S.C. § 1232(g).
- Has no lawful immigration status in the United States;
- Has not attained 18 years of age; and with respect to whom: (i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States available to provide care and physical custody

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Terminology

Unaccompanied Alien Child (UAC):

- **For Asylum Purposes, the key is whether or not meets UAC definition at the time of filing.**

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Unaccompanied Alien Child (UAC):

- Advantages of UAC: initial non-adversarial asylum adjudication by USCIS [INA § 208(b)(3)(C)];
- Not subject to expedited removal [8 USC § 1232(a)(2)(D)(i)];
- One-Year Bar does not apply [INA § 208(a)(2)(E)]
Safe-Third Country Bar does not apply;
- Voluntary Departure without bond or financial means [8 USC §1232(a)(2)(D)(ii)]

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Terminology

- **Special Immigration Juvenile (SIJ):** is an immigration classification available to certain individuals under the age of 21 who have been abused abandoned or neglected and meet other requirements. INA § 101(a)(27)(J)(i).
- **Minor:** the regulations mention the term "minor" in the context of rules governing service of process and in absentia orders for individuals under the age of 14. 8 C.F.R. § 236.2(a).

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*Guidelines for Immigration Court Cases
Involving Juveniles (OPPM 17-03)*

- Applies to all unmarried Respondents under 18
- IJ should apply age-appropriate procedures
- Schedule juvenile dockets to facilitate pro bono representation
- Use child appropriate techniques
- Be vigilant about misrepresentation or fraud

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Recent Significant Litigation

- *C.J.L.G. v. Sessions*, 880 F.3d 1122 (9th Cir. 2018), regarding potential due process issues that arise when alien minors are unrepresented.
- 8 USC §1229a- does not allow for government funded representation.

Federal Litigation



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Recent Significant Litigation

- *Flores v. Sessions*, 862 F.3d 863 (9th Cir. July 5, 2017)(bond hearing for UAC)—Paragraph 24A of the Flores Settlement Agreement affords minors in removal proceedings a bond redetermination hearing.

Federal Litigation



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Recent Significant Litigation

- All UAC in ORR custody have a right to request a bond hearing before an Immigration Judge, but ORR still has sole authority over the minor's release and placement with a sponsor. *Flores v. Sessions*, 862 F.3d 863 (9th Cir. 2017).
- ORR Counsel's Role

Federal Litigation



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Recent Significant Litigation

Saravia v. Sessions, 2017 WL 5569838 (N.D. Cal. 2017) (class-action: certain UACs released from ORR custody and re-arrested by ICE have a right to a hearing before an IJ on the basis for re-arrest).

Federal Litigation



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Office of Legal Access Programs (OLAP):

- Legal Orientation Program for Custodians of Unaccompanied Alien Children (LOPC)
- Current Concerns
- Friend of Court
- Juvenile Dockets

OLAP



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Office of Legal Access Programs

- Legal Orientation Program Hypo

OLAP



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Protection Law Claims

- SNPC (Current and Former Gang Members)-
Believed to be Trafficker (Drug and Human)
- Child Perspective/Indirect harm
- Sexual Orientation/Transgender
- Indigenous Issues- Discrimination
- Family as a PSG
- Fear of Gang related claims

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Other relief

- SIJ Adjustments
- T Visas /U Visas

Immigration Court Issues



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Emerging Immigration Court Issues

- Motions to Advance, (Bond, VD, Merits)
- Motions to Continue *Matter of Hashmi*, 24 I&N Dec. 785 (BIA 2009).
- Motions to Sever
- Motions to Change Venue & Representation
- Voluntary Departure v. Withdrawal
- Logistical Issues- Relay Interpreters

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Emerging Immigration Court Issues:

- Proceeding Limitations: Parents with reinstated orders in withholding only proceedings

Immigration Court Issues



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Vexing Issues

UAC Determination Hypo

- Respondent is 17 when apprehended by CBP and is unaccompanied by a parent
- She is initially transferred to the care of ORR
- She is released to her adult brother
- She files an I-589 with USCIS one month after she turns 18

Vexing Issues



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Vexing Issues:

Age Out Issues- UAC status is not static

- *Harmon v. Holder*, 758 F.3d 728, 733-35 (6th Cir. 2014)(where former UAC was an adult [23 years old] at the time of asylum filing, the TVPRA does not transfer initial jurisdiction to USCIS). *See also Mazariegos-Diaz v. Lynch*, 605 F. App'x 675, 676 (9th Cir. 2015) ("A person's status as an unaccompanied alien child for purposes of the TVPRA's initial-jurisdiction provision is determined as of the date the person applies for asylum" (citing INA § 208(b)(3)(C))
- UAC Memo from EOIR's General Counsel

Vexing Issues



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Emerging Immigration Court Issues

• TVPRA Protections for SIJ Petitioners—

See INA §101(b)(1)(definition of child is unmarried person under 21 years of age); see also Section 235(d)(6) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub.L. 110-457, 122 Stat. 5044, 5080 (December 23, 2008)(provides age-out protection SIJ petitioners). The USCIS Policy Manual also provides that there is no age limit for SIJ-based applicants for adjustment of status, when an SIJ petitioner has properly filed while under 21 years of age.

- UAC Status is Subject to Change with respect to Asylum— age; accompanied; misrepresentation

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Emerging Immigration Court Issues

- Motions to Suppress *Matter of Barcenas*, 19 I&N Dec. 609, 611 (BIA 1988)(I-213 inherently reliable).
- Motions to Terminate
- 4th, 5th Amendment Violations
- Regulatory Violations

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Emerging Immigration Court Issues

- Suppression of Evidence
- Disclosure and use of juvenile delinquency records and other sealed records.

Immigration Court Issues



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Emerging Immigration Court Issues

- Experiences with *Saravia* and *Flores* Bond Hearings (Leg Up on Adult Bond Hearing)– Order to Show Cause

Immigration Court Issues



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Additional Vexing Issues: Service of NTAs

- Minors under 14- 8 CFR §103.8(c)(2)(ii)- shall be made upon the person with whom the minor resides whenever possible. If the minor is residing with parents then service is required on a parent. *Matter of Mejia-Andino*, 23 I&N Dec. 533 (BIA 2003).
- Juveniles older than 14- See *Flores-Chavez v. Ashcroft*, 362 F.3d 1150 (9th Cir.2004)(extending regulations to all juveniles).



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Additional Vexing Issues: Removability

An IJ “shall not accept an admission of removability from an unrepresented respondent who is ... under the age of 18 and is not accompanied by an attorney or legal representative, a near relative, legal guardian or friend.” 8 CFR §1240.10(c).

An IJ can accept factual admissions. *Matter of Amaya-Castro*, 21 I&N Dec. 583 (BIA 1996)(an I-213 is presumptively reliable). The BIA has relied on biographical information in a Form I-213 obtained from a respondent as young as fifteen-years-old. *Matter of Ponce-Hernandez*, 22 I&N 784, 786-87 (BIA 1999).



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Additional Vexing Issues: Service of NTAs

- *Matter of Castro-Tum*, 27 I&N Dec. 271 (A.G. 2018) (Under INA § 240(b)(5)(A), so long as DHS adequately alleges that it provided legally sufficient written notice to an alien, the alien “shall be ordered removed in absentia if [the Department of Homeland Security] establishes by clear, unequivocal, and convincing evidence that the written notice was so provided and that the alien is removable.” If notice is deficient, “the proper course is to grant a continuance or terminate.”)



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Service of NTA / *In Absentia* Hypothetical

- Respondent was a 13 year old UAC at time of service of NTA
- NTA contains stamp that says "Served on Conservator"
- According to HHS-ORR Discharge Notice, ORR released Respondent to custody of his adult brother
- EOIR mailed hearing notice to address listed on HHS-ORR Notice
- Respondent failed to appear for the hearing.



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Recurring Vexing Issues

- Asylum Claims that are denied by USCIS and who files the application with the court
- Recent uptick in requests for evidence in I-360 adjudications



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Advancements

- Identification and Referral of Potential Child Abuse (Reporting Child Abuse)
- Child Advocates Guidance - Appointment by ORR and BIR:
 - Chicago, Harlingen, Houston, Los Angeles, New York, Phoenix, San Antonio, and Washington, D.C.

Emerging Issues



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Hypo: Reporting Child Abuse – what do we do?

- Respondents (teen siblings) claim that their aunt and sponsor is forcing them to work and not go to school.

Child Abuse



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Hypo- What do we do?

- Respondent claims the final order attributed to him was actually issued to an impostor (his brother) and Respondent is about to age out.
- Respondent 8 year old female sold to couple by drug-addicted mother. Adoptive father raped Respondent.

Hypo



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Advancements in Progress

- Human trafficking protocols - trafficking victim referrals
- Withdrawals of Admission

Emerging Issues



Questions?

Contact information:

- Caitlin Brazill: caitlin.brazill@usdoj.gov
- Daniel Cicchini: daniel.cicchini@usdoj.gov
- Amy Hoogasian: amy.hoogasian@usdoj.gov
- Randa Zagzoug: randa.zagzoug@usdoj.gov

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